

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO.
	)	
NATHAN PETERSON,	)	
d/b/a IBackups Inc.	)	
	)	
Defendant.	)	
	)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, Jay V. Prabhu, Special Assistant United States Attorney, the defendant NATHAN PETERSON (“Defendant”), and the Defendant’s counsel, Mark Werksman, have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

**1. Offense and Maximum Penalties**

The Defendant agrees to waive indictment and plead guilty to a criminal information charging the Defendant with two counts of criminal copyright infringement, in violation of Title 18, United States Code, Section 2319(b)(1) and Title 17, United States Code, Section 506(a)(1). The maximum penalties for each offense are a maximum term of five years of imprisonment, a fine of \$250,000, full restitution, a special assessment, and three years of supervised release. The Defendant understands that this supervised release term is in addition to any prison term the Defendant may

receive, and that a violation of a term of supervised release could result in the Defendant being returned to prison for the full term of supervised release.

## **2. Factual Basis for the Plea**

The Defendant will plead guilty because the Defendant is in fact guilty of the charged offense. The Defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines. With respect to the Guidelines, the Defendant specifically admits to the following:

- a. The Defendant admits that his actions included manufacture and uploading of infringing items protected by copyright, within the meaning of the provisions of Section 2B5.3(b)(2) of the applicable Federal Sentencing Guidelines.
- b. The Defendant admits that his infringement resulted in a loss of more than \$7,000,000 but less than \$20,000,000, as described in Section 2B5.3(b)(1)(B) of the applicable Federal Sentencing Guidelines.

## **3. Assistance and Advice of Counsel**

The Defendant is satisfied that the Defendant's attorney has rendered effective assistance. The Defendant understands that by entering into this agreement, Defendant surrenders certain rights as provided in this agreement. The Defendant understands that the rights of criminal Defendants include the following:

- a. the right to plead not guilty and to persist in that plea;

- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

#### **4. Role of the Court and the Probation Office**

The Defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the Defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The Defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the Defendant may have received from the Defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738, the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the Defendant will receive, and the Defendant cannot withdraw a guilty plea based upon the actual sentence.

## **5. Waiver of Appeal, FOIA and Privacy Act Rights**

The Defendant also understands that Title 18, United States Code, Section 3742 affords a Defendant the right to appeal the sentence imposed. Nonetheless, the Defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The Defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

## **6. Waiver of DNA Testing**

The Defendant also understands that Title 18, United States Code, Section 3600 affords a Defendant the right to request DNA testing of evidence after conviction. Nonetheless, the Defendant knowingly waives that right. The Defendant further understands that this waiver applies to DNA testing of any items of evidence in this case that could be subjected to DNA testing, and that the waiver forecloses any opportunity to have evidence submitted for DNA testing in this case or in any post-conviction proceeding for any purpose, including to support a claim of innocence to the charges admitted in this plea agreement.

**7. Special Assessment**

Before sentencing in this case, the Defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

**8. Payment of Monetary Penalties**

The Defendant understands and agrees that, pursuant to Title 18, United States Code, Sections 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the Defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the Defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the Defendant is incarcerated, the Defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

**9. Restitution for Offense of Conviction**

The Defendant agrees to the entry of a Restitution Order for the full amount the Government can establish he was paid for his illegal conduct. As indicated in the statement of facts filed with this plea agreement, this amount is \$5,402,448. This amount is less than losses inflicted on the Defendant's victims because the amount the Defendant charged for his infringing items was far less than the retail value of the infringed items. The Government is aware that at least the following victims have suffered losses as a result of the Defendant's conduct:

- i. Adobe Systems Incorporated, 345 Park Avenue, San Jose, CA 95110-2704;
- ii. Autodesk, Inc., 111 McInnis Parkway, San Rafael, CA 94903;
- iii. Avanquest Publishing USA, Inc., 7031 Koll Center Parkway, Pleasanton, CA 94566;
- iv. Computer Associates International, Inc., One Computer Associates Plaza, Islandia, NY 11749;
- v. Corel Corporation, 1600 Carling Avenue, Ottawa, Ontario, Canada K1Z 8R7;
- vi. COSMI Corporation, 1351 Charles Willard Street, Carson, CA 90746;
- vii. CyberLink USA, 46750 Fremont Blvd, Suite 200, Fremont, CA 94538;
- viii. Intuit, 2632 Marine Way, Mountain View, CA 94043;
- ix. Laughingbird Software LLC, 2510 Worth Way, Camarillo, CA 93012;
- x. McAfee, Inc. 3965 Freedom Circle, Santa Clara, CA 95054;
- xi. Macromedia, Incorporated, 601 Townsend Street, San Francisco, CA 94103;
- xii. Microsoft Corporation, One Microsoft Way, Redmond, WA 98052-6399;
- xiii. Nero Inc., 330 N. Brand Blvd., Ste 695, Glendale, CA 91203-2335;
- xiv. Roxio, 455 El Camino Real, Santa Clara, CA 95050;
- xv. Panicware, Inc., P.O. Box 30876, Seattle, WA 98113-0876;
- xvi. Scansoft, 1 Wayside Road, Burlington, MA 01803;
- xvii. Symantec Corporation, 20330 Stevens Creek Blvd., Cupertino, CA 95014;
- xviii. Tenebril, Inc., 2 Waters Park Drive, Suite 150, San Mateo, CA 94403;
- xix. Topics Entertainment Inc., 1600 S.W. 43rd St., Renton, WA 98055;
- xx. Yahoo! Inc., 701 First Avenue, Sunnyvale, CA 94089; and
- xxi. Zone Labs, L.L.C., 475 Brannan St., Suite 300, San Francisco, CA 94107.

Allocation of any restitution between victims to be determined by the Court.

**10. Immunity from Further Prosecution in this District**

The United States will not further criminally prosecute the Defendant in the Eastern District of Virginia for the specific conduct described in the information or statement of facts.

**11. Prosecution in Other Jurisdictions**

The United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the Defendant provides under this agreement to aid a prosecution of the Defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information the Defendant provides pursuant to this agreement against the Defendant, the United States Attorney's Office for Eastern District of Virginia agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

**12. The Defendant's Obligations Regarding Assets Subject to Forfeiture**

The Defendant agrees to identify all assets over which the Defendant exercises or exercised control, directly or indirectly, within the past four years, or in which the Defendant has or had during that time any financial interest. The Defendant agrees to take all steps as requested by the United States to obtain from any other parties by any lawful means any records of assets owned at any time by the Defendant. The Defendant agrees to undergo any polygraph examination the United States may choose to administer concerning such assets and to provide and/or consent to the release of the Defendant's tax returns for the previous five years. Defendant agrees to forfeit to the United States all of the Defendant's interests in any asset of a value of more than \$1,000 that, within the last four

years, the Defendant owned, or in which the Defendant maintained an interest, the ownership of which the Defendant fails to disclose to the United States in accordance with this agreement.

### **13. Forfeiture Agreement**

The Defendant agrees to forfeit all interests in any asset related to his copyright infringement that the Defendant owns or over which the Defendant exercises control, directly or indirectly, as well as any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of his offense, including but not limited to the following specific property:

- i. One 2005 DODGE RAM bearing VIN# 1D7HU18D15S145134;
- ii. One 2003 CHEVROLET CORVETTE bearing VIN# 1G1YY12S735111869;
- iii. One 2006 MERCEDES-BENZ S-CLASS bearing VIN# WDBNG74J76A475935;
- iv. One 1949 MERCURY COUPE bearing VIN# 9CM271267;
- v. One 2004 TOYOTA CAMRY bearing VIN# 4T1BE32KX4U864378;
- vi. One 2005 TOYOTA COROLLA bearing VIN# 1NXBR32E85Z441329;
- vii. \$49,951.63 in funds from UNION BANK OF CALIFORNIA ACCT# XXXXXX8027 AND ACCT# XXXXXX9929;
- viii. \$9,696.96 in funds from E\*TRADE SECURITIES, LLC. ACCT# XXXXXX-9149;
- ix. \$12,000.00 in funds from VALLEY WIDE ESCROW ACCT# XXXXXX702-2;
- x. \$15,000.00 in funds from UNION BANK OF CALIFORNIA ACCT# XXXXXX3300;
- xi. Proceeds from the sale of real property located in Antelope Acres, CA;



- xii. One Computer Master Otive System bearing serial number 4518-0205;
- xiii. One Computer Master Otive System bearing serial number 4523-0205;
- xiv. One Computer Master Otive System bearing serial number 4522-0205;
- xv. One Computer Master Otive System bearing serial number 3884-0804;
- xvi. One Computer Master Otive System bearing serial number 3885-0804;
- xvii. One Computer Master Otive System bearing serial number 4531-0205;
- xviii. One Computer Master Otive System bearing serial number 4530-0205;
- xix. One Computer Master Otive System bearing serial number 3887-0804;
- xx. One Computer Master Otive System bearing serial number 3886-0804;
- xxi. One Sony Vaio bearing serial number 3009445;
- xxii. One HP Media Center bearing serial number MXK42903Z5;
- xxiii. One HP Pavilion A00 bearing serial number MXM4080CLC;
- xxiv. One Mirra M-120 bearing serial number KA4705679;
- xxv. One Maxtor External Drive bearing serial number Y82112FE;
- xxvi. One Computer Master Otive System bearing serial number 3888-0804;
- xxvii. One Rimage bearing serial number U043722;
- xxviii. One HP Office Jet 7410 bearing serial number MY4A4G92M4;
- xxix. One Zebra Technologies LP2844 Label Maker bearing serial number 42A041401035;
- xxx. Two Micro Boards Print Factory Printers;
- xxxi. One Samsung Digital Audio Player bearing serial number KYIWB05294N;
- xxxii. One HP PSC 2210 bearing serial number MYCCTF45KJ;

- xxxiii. One box of computer software;
- xxxiv. Eleven boxes and/or bags of CDs;
- xxxv. One Radware Web Server Director bearing serial number W1400317;
- xxxvi. One Cisco Systems Catalyst 2950 bearing serial number FOC0846Y0RW;
- xxxvii. One Juniper Network Netscreen 25 bearing serial number 0096062004001732;
- xxxviii. One Radware Certain T100 bearing serial number W1405342; and
- xxxix. Three rackmount computers.

The Defendant further agrees to waive all interest in the assets in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The Defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The Defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case.

#### **14. Waiver of Further Review of Forfeiture**

The Defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The Defendant also waives any failure by the Court to advise the Defendant of any applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J). The

Defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The Defendant understands and agrees that all property covered by this agreement is subject to forfeiture as proceeds of illegal conduct or substitute assets for property otherwise subject to forfeiture.

#### **15. Breach of the Plea Agreement and Remedies**

This agreement is effective when signed by the Defendant, the Defendant's attorney, and an attorney for the United States. The Defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the Defendant's attorney). If the Defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The Defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The Defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the Defendant agrees to waive any statute-of-limitations defense; and

- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the Defendant, and all such information, statements, and leads derived therefrom may be used against the Defendant. The Defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the Defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the Defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence.

#### **16. Nature of the Agreement and Modifications**

This written agreement constitutes the complete plea agreement between the United States, the Defendant, and the Defendant's counsel. The Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the Defendant to plead guilty. Any modification of this plea

agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Paul J. McNulty  
United States Attorney

By: \_\_\_\_\_  
Jay V. Prabhu  
Special Assistant United States Attorney

APPROVED:

\_\_\_\_\_  
Robert W. Wiechering  
Approving Supervisor

Date of Approval:

\_\_\_\_\_

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: \_\_\_\_\_  
\_\_\_\_\_  
Nathan Peterson  
Defendant

Defense Counsel Signature: I am counsel for the Defendant in this case. I have fully explained to the Defendant the Defendant's rights with respect to the pending information. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the Defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the Defendant. To my knowledge, the Defendant's decision to enter into this agreement is an informed and voluntary one.

Date: \_\_\_\_\_  
\_\_\_\_\_  
Mark Werksman  
Counsel for the Defendant Nathan Peterson

Alexandria Division

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Before: \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE